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12 AMAZON.COM, INC., AMAZON
LOGISTICS, INC., GOLDEN STATE FC
13 LLC, AMAZON FULFILLMENT SERVICES,
INC. and KIM HERZOG
14

15 UNITED STATES DISTRICT COURT
16 CENTRAL DISTRICT OF CALIFORNIA
17

18 JOHNATHON ERVIN,
19 Plaintiff,

20 vs.

21 AMAZON.COM SERVICES, LLC;
AMAZON.COM, INC.; AMAZON
22 LOGISTICS, INC.; GOLDEN
STATE FC, LLC; AMAZON
23 FULFILLMENT SERVICES, INC.;
KIM HERZOG; and DOES 1 to 100,
24 inclusive,

25 Defendants.
26
27
28

Case No. 2:24-cv-10311

(Los Angeles Superior Court, No.
24STCV27450)

**DEFENDANTS' NOTICE OF
REMOVAL OF CIVIL ACTION
TO THE UNITED STATES
DISTRICT COURT**

[28 U.S.C. §§ 1332, 1441, & 1446]

Complaint Filed: October 21, 2024
(Los Angeles Superior Court)

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22 FEHA 16

1 **TO THE CLERK AND HONORABLE JUDGES OF THE UNITED**
 2 **STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF**
 3 **CALIFORNIA AND TO PLAINTIFF AND HIS COUNSEL OF RECORD:**

4 **PLEASE TAKE NOTICE THAT,** Defendants, Amazon.com Services LLC,
 5 Amazon.com, Inc., Amazon Logistics, Inc., Golden State FC LLC, Amazon
 6 Fulfillment Services, Inc. and Kim Herzog (collectively, “Defendants”)
 7 contemporaneously with the filing of this Notice, hereby effect removal of the above-
 8 referenced action from the Superior Court in the State of California for the County
 9 of Los Angeles to the United States District Court for the Central District of
 10 California. This Court has original subject matter jurisdiction over Plaintiff
 11 Johnathon Ervin’s (“Plaintiff”) lawsuit under 28 U.S.C. §§ 1332(a) because complete
 12 diversity exists and the amount in controversy exceeds \$75,000.¹

13 In support of this removal, Defendants state the following:

14 **I. PLEADINGS, PROCESS AND ORDERS**

15 1. On October 21, 2024, Plaintiff filed a Complaint in the Superior Court
 16 for the State of California, County of Los Angeles (“Superior Court”), entitled
 17 *Johnathon Ervin v. Amazon.com Services, LLC, et al.*, designated as Case No.
 18 24STCV27450 (“Complaint”). Plaintiff’s Complaint alleges seven causes of action:
 19 (1) discrimination on the bases of race in violation of California Government Code
 20 Section 12900, *et seq.*; (2) hostile work environment harassment on the bases of race
 21 in violation of California Government Code Section 12900, *et seq.*; (3) retaliation for
 22 the exercise of rights guaranteed under the California Fair Employment and Housing

23 ¹ This Notice of Removal discusses the nature and amount of damages placed at issue
 24 by Plaintiff’s Complaint. Defendants’ references to specific damage amounts and
 25 citation to comparable cases are provided solely for establishing that the amount in
 26 controversy exceeds the jurisdictional minimum. Defendants maintain that each of
 27 Plaintiff’s claims is without merit and Defendants are not liable to Plaintiff. No
 28 statement or reference contained herein shall constitute an admission of liability or a
 suggestion that Plaintiff will or actually could recover any damages based upon the
 allegations contained in the Complaint or otherwise. “The amount in controversy is
 simply an estimate of the total amount in dispute, not a prospective assessment of
 [Defendants’] liability.” *Lewis v. Verizon Commc’ns, Inc.*, 627 F.3d 395, 400 (9th
 Cir. 2010).

1 Act (“FEHA”), *e.g.* participating in protected activities, and/or opposing Defendants’
 2 failure to provide such rights, in violation of California Government Code Section
 3 12900, *et seq.*; (4) failure to prevent discrimination, harassment, or retaliation, in
 4 violation of California Government Code Section 12940(k); (5) whistleblower
 5 retaliation, in violation of California Labor Code Section 1102.5, *et seq.*; (6)
 6 wrongful termination in violation of public policy; and (7) intentional infliction of
 7 emotional distress. Along with the Complaint, Plaintiff filed his Civil Case Cover
 8 Sheet and Summons. (True and correct copies of the Summons, Civil Case Cover
 9 Sheet and Complaint are attached hereto as “**Exhibit A.**”)

10 2. On October 21, 2024, the Clerk of the Superior Court filed an
 11 Alternative Dispute Resolution Package and Notice of Case Assignment – Unlimited
 12 Civil Case. (True and correct copies of the Alternative Dispute Resolution Packet
 13 and Notice of Case Assignment – Unlimited Civil Case are attached hereto as
 14 “**Exhibit B.**”) On October 22, 2024, the Clerk of the Superior Court filed a Notice
 15 of Case Management Conference, and an Order to Show Cause Hearing for Failure
 16 to File Proof of Service, both scheduled for March 20, 2025 at 8:30 a.m. (True and
 17 correct copies of the Notice of Case Management Conference and Order to Show
 18 Cause Hearing for Failure to File Proof of Service are attached hereto as “**Exhibit**
 19 **C.**”)

20 3. On October 23, 2024, Plaintiff filed a Preemptory Challenge to Judicial
 21 Officer pursuant to California Code of Civil Procedure §170.6, and on October 24,
 22 2024, the Clerk of the Superior Court filed a Notice of Case Reassignment And Order
 23 For Plaintiff To Give Notice (Vacate Dates), reassigning the matter from Judge
 24 Barbara M. Scheper to Judge Cherol J. Nellon. The Clerk of the Superior Court also
 25 filed a Minute Order the same day accepting Plaintiff’s preemptory challenge. (True
 26 and correct copies of Plaintiff’s Preemptory Challenge to Judicial Office, the
 27 Superior Court’s Notice of Case Reassignment And Order For Plaintiff To Give
 28 Notice (Vacate Dates) and Minute Order are attached hereto as “**Exhibit D.**”)

4. On October 30, 2024, Plaintiff filed Proofs of Service of Summons for Defendants, Amazon.com Services LLC, Amazon Logistics, Inc., Golden State FC LLC and Amazon Fulfillment Services, Inc.; on October 31, 2024, Plaintiff filed a Proof of Service of Summons for Defendant Kim Herzog; and on November 8, 2024, Plaintiff filed a Proof of Service of Summons for Defendant Amazon.com, Inc. (True and correct copies of Plaintiff's Proofs of Service of Summons are attached hereto as "**Exhibit E.**")

5. On October 31, 2024, the Clerk of the Superior Court filed a Notice of Case Management Conference for March 18, 2025 at 8:30 a.m. (A true and correct copy of the Notice of Case Management Conference is attached hereto as "**Exhibit F.**")

6. On November 26, 2024, Defendants filed and served their Answer to Plaintiff's Complaint ("Answer") with the Superior Court. (A true and correct copy of Defendants' Answer is attached hereto as "**Exhibit G.**")

7. **Exhibits A-G** constitute all process, pleadings and orders that have been filed and served in this action.

II. REMOVAL IS TIMELY

8. This Notice of Removal is timely under 28 U.S.C. § 1446(b)(1), which provides that a notice of removal of a civil action shall be filed within 30 days after receipt by the defendant, through service or otherwise, a copy of the initial pleading setting forth the claim for relief upon which such action or proceeding is based. Plaintiff personally served Defendants on October 29, 30 and November 1, 2024. (**Ex. E.**) This notice of removal is timely because it is filed on or before November 28, 2024. No previous Notice of Removal has been filed or made with this Court for the relief sought herein.

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1 **III. THIS COURT HAS SUBJECT MATTER JURISDICTION**

2 **A. Removal Pursuant To U.S.C. 1332(a)(1) Is Proper**

3 9. This is a civil action of which the Court has original jurisdiction
4 pursuant to 28 U.S.C. §1332 (diversity jurisdiction), and it is one which Defendants
5 may remove pursuant to 28 U.S.C. §1441. Removal is proper based on diversity
6 jurisdiction if: (a) there is complete diversity among opposing parties; and (b) “the
7 matter in controversy exceeds the sum or value of \$75,000.” 28 U.S.C. § 1332(a).
8 Both conditions are met.

9 **B. Complete Diversity of Citizenship Exists**

10 10. A case may be heard in federal court under diversity jurisdiction if there
11 is complete diversity, i.e., all plaintiffs are diverse from all defendants. 28 U.S.C. §
12 1332(a).

13 11. A defendant may remove an action to federal court under 28 U.S.C. §
14 1332, provided that no defendant is a citizen of the same state in which the action
15 was brought or of the same state in which the plaintiff is a citizen. 28 U.S.C. §
16 1441(a), (b); *Caterpillar, Inc. v. Lewis*, 519 U.S. 61, 68 (1996) (complete diversity
17 exists when “the citizenship of each plaintiff is diverse from the citizenship of each
18 defendant.”)

19 12. Here, all requirements are met because Plaintiff is a citizen of
20 California; Defendant Kim Herzog is a citizen of Tennessee; and Defendants,
21 Amazon.com, Inc., Amazon Logistics, Inc. and Amazon.com Services, LLC are
22 citizens of Delaware or Washington State. The citizenship of Defendants, Amazon
23 Fulfillment Services, Inc. and Golden State FC LLC can be disregarded since neither
24 entity has existed since January 1, 2018 and January 1, 2019 respectively.

25 **1. Plaintiff Johnathon Ervin Is A Citizen Of California**

26 13. “An individual is a citizen of the state in which he is domiciled. . .”
27 *Boon v. Allstate Ins. Co.*, 229 F. Supp.2d 1016, 1019 (C.D. Cal. 2002) (citing *Kanter*
28 *v. Warner-Lambert Co.*, 265, F.3d 853, 857 (9th Cir. 2001)). For purposes of

1 diversity of citizenship jurisdiction, citizenship is determined by the individual's
2 domicile at the time that the lawsuit is filed. *Armstrong v. Church of Scientology*
3 *Int'l*, 243 F.3d 546, 546 (9th Cir. 2000) (citing *Lew v. Moss*, 797 F.2d 747, 750 (9th
4 Cir. 1986)). Continuing residence creates a presumption of domicile. *Washington v.*
5 *Hovensa LLC*, 652 F.3d 340, 345 (3rd Cir. 2011); *State Farm Mut. Auto Ins. Co. v.*
6 *Dyer*, 19 F.3d 514, 519 (10th Cir. 1994).

7 14. At the time Plaintiff commenced this action Plaintiff was a citizen of the
8 State of California. Plaintiff alleges in his Complaint that he, “. . . is, and at all times
9 mentioned in [his] Complaint was, a resident of the County of Los Angeles,
10 California.” (See **Ex. A**, Complaint (“Compl.”) ¶2.) *State Farm Mut. Auto. Ins. Co.*
11 *v. Dyer*, 19 F.3d 514, 519-20 (10th Cir. 1994) (allegation by party in state court
12 complaint of residency “created a presumption of continuing residence in [state] and
13 put the burden of coming forward with contrary evidence on the party seeking to
14 prove otherwise”), citing, *Lew v. Moss*, 797 F.2d 747, 750 (9th Cir. 1986). Plaintiff
15 does not allege that he was a citizen of any state other than California and there is no
16 indication that Plaintiff is, or was, a citizen of states other than California at any time
17 relevant to the Complaint. Thus, Plaintiff was domiciled in the State of California,
18 and is therefore a citizen of California for purposes of diversity jurisdiction in this
19 matter.

20 **2. Defendant Kim Herzog Is A Citizen of Tennessee**

21 15. For purposes of diversity of citizenship jurisdiction, citizenship is
22 determined by the individual's domicile at the time that the lawsuit is filed, Defendant
23 Kim Herzog's domicile is thus Tennessee for purposes of this analysis. *Armstrong*
24 *v. Church of Scientology Int'l*, 243 F.3d 546, 546 (9th Cir. 2000) (citing *Lew v. Moss*,
25 797 F.2d 747, 750 (9th Cir. 1986)). Continuing residence creates a presumption of
26 domicile. *Washington v. Hovensa LLC*, 652 F.3d 340, 345 (3rd Cir. 2011); *State*
27 *Farm Mut. Auto Ins. Co. v. Dyer*, 19 F.3d 514, 519 (10th Cir. 1994).

1 16. Defendant Kim Herzog resides in Tennessee and has lived there since
2 June 4, 2023. (*See* Declaration of Kim Herzog (“Herzog Decl.”) ¶1.) Ms. Herzog’s
3 employment is in Tennessee, she owns a home in Tennessee, she has registered her
4 two vehicles in Tennessee, she has Tennessee driver’s license, and she is registered
5 to vote in Tennessee. (*Id.* at ¶¶1-3.) Ms. Herzog is currently present in Tennessee,
6 and Plaintiff personally served Ms. Herzog at her Tennessee residence. (*Id.* at ¶¶1,
7 4.) Ms. Herzog intends to remain in Tennessee indefinitely. (*Id.* at ¶1.) Ms. Herzog
8 is therefore a citizen of Tennessee for purposes of removal.

9 **3. Defendants, Amazon.com, Inc., and Amazon Logistics, Inc.**
10 **Are Citizens Of Delaware Or Washington State**

11 17. For diversity purposes, “a corporation shall be deemed to be a citizen of
12 every State and foreign state by which it has been incorporated and of the State or
13 foreign state where it has its principal place of business.” 28 U.S.C. § 1332(c)(1).

14 18. The Supreme Court has interpreted the phrase “principal place of
15 business” in 28 U.S.C. § 1332(c)(1) to mean “the place where a corporation’s officers
16 direct, control, and coordinate the corporation’s activities . . . [I]n practice it should
17 normally be the place where the corporation maintains its headquarters—provided
18 that the headquarters is the actual center of direction, control, and coordination, i.e.,
19 the ‘nerve center,’ and not simply an office where the corporation holds its board
20 meetings . . .” *Hertz Corp. v. Friend*, 559 U.S. 77, 92–93 (2010).

21 19. Both Defendants, Amazon.com, Inc. and Amazon Logistics, Inc., were
22 incorporated in Delaware. (*See* Declaration of Zane Brown (“Brown Decl.”) ¶3.)
23 These corporations have had their corporate headquarters and principal place of
24 business in Seattle, Washington. (*Id.*) Seattle, Washington is where direction,
25 control, and coordination for these entities and executive functions take place. (*Id.*)
26 The greater part of these corporations’ administrative functions (including corporate
27 human resources, payroll, benefits, information technology, corporate finance,
28 production operations, and business strategy) are conducted in Seattle, Washington

1 and the respective managers for these departments work in Seattle, Washington. (*Id.*)
2 As such, corporate policies, including those concerning discrimination, harassment
3 and retaliation have been established by leaders based in Seattle, Washington. (*Id.*)

4 20. Amazon.com, Inc. and Amazon Logistics, Inc., are therefore citizens of
5 the State of Delaware and Washington for purposes of determining diversity
6 jurisdiction. 28 U.S.C. § 1332(c)(1).

7 21. Plaintiff has erroneously named Amazon Fulfillment Services, Inc. as a
8 Defendant. However, Amazon Fulfillment Services, Inc. has not existed as a legal
9 entity since January 1, 2018. (*Id.* at ¶4.) Specifically, effective January 1, 2018,
10 Amazon.com LLC merged with Amazon Fulfillment Services, Inc. and changed its
11 name to Amazon.com Services, Inc. the same day. (*Id.*) Effective December 30,
12 2019, Amazon.com Services, Inc. converted to Amazon.com Services LLC (another
13 named Defendant in this action). (*Id.*). Accordingly, the Court need not consider the
14 citizenship of Amazon Fulfillment Services, Inc. in determining diversity
15 jurisdiction. Nonetheless, while it was in existence, Amazon Fulfillment Services,
16 Inc. was organized under the laws of Delaware, and had its principal place of business
17 in Seattle, Washington, making it a citizen of Washington and Delaware at the time
18 it existed as a legal entity. (*Id.*)

19 **4. Defendant Amazon.com Services LLC Is A Citizen Of**
20 **Delaware and Washington State**

21 22. Unlike corporations, “an LLC is a citizen of every state of which its
22 owners/members are citizens.” *Johnson v. Columbia Props. Anchorage, LP*, 437
23 F.3d 894, 899 (9th Cir. 2006).

24 23. This standard applies to Defendant Amazon.com Services LLC.
25 Amazon.com Sales, Inc. is the sole member of Amazon.com Services LLC. (*Id.* at
26 ¶5.) Amazon.com Sales, Inc. is a Delaware corporation with its corporate
27 headquarters and principal place of business in Seattle, Washington. (*Id.*)
28

1 24. Accordingly, Amazon.com Services LLC, is a citizen of Delaware and
2 Washington State because it is a limited liability company whose sole member is
3 incorporated in Delaware and has its principal place of business in Washington State.

4 25. Plaintiff has also erroneously named Golden State FC, LLC as a
5 Defendant. However, Golden State FC, LLC has not existed as a legal entity since
6 January 1, 2019. (*Id.* at ¶6.) Specifically, effective January 1, 2019, Golden State
7 FC, LLC merged with Amazon.com Services, Inc. and retained the name
8 Amazon.com Services, Inc. (*Id.*) Effective December 30, 2019, Amazon.com
9 Services, Inc. converted to Amazon.com Services LLC (another named Defendant in
10 this action). (*Id.*) Accordingly, the Court need not consider the citizenship of Golden
11 State FC, LLC in determining diversity jurisdiction. Nonetheless, while in existence
12 Golden State FC, LLC was organized under the laws of Delaware, and had its
13 principal place of business in Seattle, Washington, making it a prior citizen of
14 Washington and Delaware. (*Id.*)

15 **5. The Citizenship of “Doe” Defendants Are Disregarded**

16 26. Under 28 U.S.C. § 1441(a) the citizenship of defendants sued under
17 fictitious names shall be disregarded. The inclusion of “Doe” defendants in
18 Plaintiff’s Complaint has no effect on removability. *Newcombe v. Adolf Coors Co.*,
19 157 F.3d 686, 690-91 (9th Cir. 1998); 28 U.S.C. § 1441 (a) (stating that for purposes
20 of removal, the citizenship of defendants sued under fictitious names shall be
21 disregarded).

22 27. Based on the foregoing, the requirements for diversity jurisdiction as set
23 forth in 28 U.S.C. § 1441(b) are met.

24 **C. The Amount in Controversy Requirement Is Satisfied**

25 28. Diversity jurisdiction exists “where the matter in controversy exceeds
26 the sum or value of \$75,000, exclusive of interest and costs . . .” 28 U.S.C. § 1332.
27 The amount in controversy is determined from the allegations of the Complaint. *See*
28 *Campbell v. Vitran Express, Inc.*, 471 Fed. Appx. 646, 648 (9th Cir. 2012). In

1 assessing whether the amount in controversy requirement has been satisfied, “a court
2 must ‘assume that the allegations of the complaint are true and assume that a jury
3 will return a verdict for the plaintiff on all claims made in the complaint.’” *Id.* (citing
4 *Kenneth Rothschild Trust v. Morgan Stanley Dean Witter*, 199 F. Supp. 2d 993, 1001
5 (C.D. Cal. 2002)).

6 29. In determining whether the jurisdictional minimum is met, courts
7 consider all recoverable damages, including emotional distress damages, punitive
8 damages, statutory penalties, and attorneys’ fees. *Hunt v. Washington State Apple*
9 *Advertising Comm’n*, 432 U.S. 333, 347-48 (1977); *Gibson v. Chrysler Corp.*, 261
10 F.3d 927, 945 (9th Cir. 2001); *Galt G/S v. JSS Scandinavia*, 142 F. 3d 1150, 115556
11 (9th Cir. 1998).

12 30. Although the Complaint does not allege a specific amount in
13 controversy, it can be ascertained that the amount in controversy in this action does,
14 in fact, exceed \$75,000, exclusive of interest and costs. Where a complaint is silent
15 as to the amount in controversy, a defendant can establish the amount in controversy
16 by the allegations in a complaint, or by setting forth facts in the notice of removal
17 that demonstrate that the amount in controversy “more likely than not” exceeds
18 \$75,000. *Sanchez v. Monumental Life Ins. Co.*, 102 F.3d 398, 404 (9th Cir. 1996);
19 *Guas v. Miles, Inc.*, 980 F. 2d 564, 567 (9th Cir. 1992). A removing defendant “need
20 include only a plausible allegation that the amount in controversy exceeds the
21 jurisdictional threshold.” *Dart Cherokee Basin Operating Co. v. Owens*, 135 S. Ct.
22 547, 554 (2014). To satisfy this burden, a defendant may rely on a “reasonable”
23 “chain of reasoning” that is based on “reasonable” “assumptions.” *LaCross v. Knight*
24 *Transp. Inc.*, 775 F.3d 1200, 1201–02 (9th Cir. 2015). “An assumption may be
25 reasonable if it is founded on the allegations of the complaint.” *Arias v. Residence*
26 *Inn by Marriott*, 936 F.3d 920, 925 (9th Cir. 2019). That is because “[t]he amount in
27 controversy is simply an estimate of the total amount in dispute, not a prospective
28 assessment of defendant’s liability.” *Lewis v. Verizon Commc’ns, Inc.*, 627 F.3d 395,

1 400 (9th Cir. 2010). The Court may consider whether it is facially apparent from the
2 complaint that the jurisdictional amount is met. *Singer v. State Farm Mutual Auto*
3 *Ins. Co.*, 116 F.3d 373, 377 (9th Cir. 1997).

4 31. The ultimate inquiry is the amount that is put “in controversy” by
5 Plaintiff’s Complaint, and not how much, if anything, Defendants will actually owe.
6 *Rippee v. Boston Market Corp.*, 408 F.Supp.2d 982, 986 (S.D. Cal. 2005); *see also*,
7 *Scherer v. Equitable Life Assurance Soc’y of the U.S.*, 347 F.3d 394, 399 (2d Cir.
8 2003) (recognizing that the ultimate or provable amount of damages is not what is
9 considered in the removal analysis; rather, it is the amount put in controversy by the
10 plaintiff’s complaint).

11 32. In *Sasso*, the District Court affirmed that the removing party does not
12 need to prove actual facts, but rather need only include a “short and plain statement”
13 setting forth “a plausible allegation that the amount in controversy exceeds the
14 jurisdictional threshold.” *Sasso v. Noble Utah Long Beach, LLC*, 2015 U.S. Dist.
15 WL 898468 (C.D. Cal. March 3, 2015) (citing, *Dart Cherokee Basin Operating Co.*
16 *v. Owens*, 135 S. Ct. 547, 554 (2014)). Moreover, Defendants do not need to submit
17 evidence to support its notice of removal. *Dart Cherokee*, 135 S. Ct. at 553.
18 Defendants need only plausibly allege that the amount in controversy exceeds
19 \$75,000. *Id.* (“the defendant’s amount-in-controversy allegation should be accepted
20 when not contested by the plaintiff or questioned by the court.”).

21 33. Defendants deny the validity and merit of all of Plaintiff’s claims, the
22 legal contentions upon which they are purportedly based, and the claims for monetary
23 and other relief that flow from them. However, for purposes of removal only, and
24 without conceding that Plaintiff is entitled to any damages or penalties, assuming,
25 *arguendo*, the truth of Plaintiff’s allegations, it is readily apparent that Plaintiff’s
26 claims establish an amount “in controversy” in excess of the jurisdictional minimum
27 of \$75,000, exclusive of interest and costs, as required by 28 U.S.C. section 1332, as
28 set forth below. (*See Note 1*).

1 **1. Special / Economic Damages**

2 34. Here, Plaintiff seeks to recover economic and compensatory damages,
3 including “lost past and future income and employment benefits . . . lost wages,
4 overtime, unpaid expenses, and penalties, as well as interest on unpaid wages at the
5 legal rate from and after each payday on which those wages should have been paid .
6 . . .” (Comp., ¶¶ 1, 18, 27, 35, 42, 49, 57, 63, 68, 69 and Prayer for Relief.)

7 35. Plaintiff was not employed by Defendants, but rather is the owner and
8 operator of Battle-Tested Strategies, LLC, a Delivery Service Partner (“DSP”)² that
9 contracted with Defendant Amazon Logistics, Inc. to perform delivery services.
10 Accordingly, Defendants deny that an employment relationship between Plaintiff and
11 Defendants existed.

12 36. However, assuming the allegations in Plaintiff’s Complaint as true, and
13 without Defendants waiving any of their defenses, Defendants’ reasonable estimate,
14 based on Plaintiff’s available payment information, is that Plaintiff was “earning”
15 approximately \$9,440.00 gross monthly. Approximately nineteen months have
16 passed since the last date Plaintiff alleges he was employed by Defendants. During
17 that time, assuming *arguendo*, that Plaintiff has not worked at all, the amount of
18 recoverable economic “back pay” in controversy would total at least \$179,360.00
19 (\$9,440.00 x 19 months). Further, estimating that a trial in this matter will not be
20 scheduled for another year, that would add an additional twelve months of
21 recoverable “back pay” to the amount in controversy. At Plaintiff’s monthly “pay”
22 of \$9,440.00, the amount of “back pay” in controversy in this case between
23 November 27, 2024 and trial one year out would total at least \$113,280.00 (\$9,440.00
24 x 12 months). Therefore, the total amount of “back pay” in controversy is
25 approximately \$292,640.00 (\$179,360.00 + \$113,280.00).

26
27
28 ² A DSP’s Delivery Associates load packages into their vehicles from delivery
stations and deliver them to customers’ homes and businesses.

1 37. In addition, to the extent Plaintiff seeks future damages or “front pay”
2 as a result of the alleged conduct by Defendants, such awards in California,
3 depending on the facts of the case, can at times often span several years. *See Smith*
4 *v. Brown-Forman Distillers Corp.*, 196 Cal. App. 3d 503, 518 (1989) (front pay until
5 mandatory retirement age reached); *Drzewiecki v. H & R Block, Inc.*, 24 Cal. App.
6 3d. 695, 705 (1972) (ten years). Even conservatively estimating that Plaintiff seeks
7 “front pay” damages that are equivalent to his “back pay” (31 months), the amount
8 of alleged “future wages” in controversy in this case would total an additional
9 \$292,640 (\$9,440 x 31 months).

10 38. Thus, it may reasonably be estimated that Plaintiff’s claims involve
11 possible alleged “back pay” and “front pay” damages that total **\$585,280.00**. Hence
12 Plaintiff’s damages for alleged “back pay” and “front pay” *alone* could surpass the
13 requisite amount in controversy threshold. Notably, “binding precedent counsels
14 against considering affirmative defenses such as mitigation in determining the
15 amount in controversy.” *Reese*, 2024 WL 1580168, at *4; *see also Arias v. Residence*
16 *Inn by Marriott*, 936 F.3d 920, 927 (9th Cir. 2019) (“[T]he amount in controversy
17 reflects the maximum recovery the plaintiff could reasonably recover.”).

18 39. Accordingly, Plaintiff’s potential economic damages placed in
19 controversy is at least **\$585,280.00**.

20 **2. General Damages**

21 40. Plaintiff also alleges that as a result of Defendants’ actions he has
22 suffered and continues to suffer non-economic damages, including “psychological
23 and emotional distress, humiliation and mental and physical pain and anguish”
24 thereby entitling him to general and compensatory damages (Comp., ¶¶ 1, 19, 28, 36,
25 43, 50, 56, 62, 63, 67, 69, 70, and Prayer for Relief).

26 41. In determining whether the jurisdictional minimum is met, courts
27 consider all recoverable damages, including emotional distress damages. *Hunt v.*
28 *Wash. State Apple Advert. Comm’n*, 432 U.S. 333, 347-48 (1977); *Galt G/S v. JSS*

1 *Scandinavia*, 142 F. 3d 1150, 1155-56 (9th Cir. 1998). Courts have even held that
2 such allegations alone are sufficient to satisfy the amount in controversy requirement.
3 *See Egan v. Premier Scales & Sys.*, 237 F. Supp. 2d. 774, 776 (W.D. Ky. 2002)
4 (where plaintiff sought damages for embarrassment, humiliation, and willful,
5 malicious and outrageous conduct, the court held that the defendant could “easily
6 make the case that the claims are more likely than not to reach the federal amount in
7 controversy requirement.”).

8 42. As to emotional damages in employment discrimination cases, juries
9 have awarded substantial damages “of hundreds of thousands of dollars . . . where
10 there is evidence that the plaintiff suffered heightened mental anguish.” *See Velez v.*
11 *Roche*, 335 F.Supp.2d 1022, 1038-40 (N.D. Cal. 2004) (collecting cases); *see also*
12 *Stainbrook v. Target Corp.*, No. 2:16-CV-00090-ODW, 2016 WL 3248665, at *4
13 (C.D. Cal. June 8, 2016) (concluding that in similar cases, emotional distress
14 damages, alone, are enough to exceed the \$75,000 requirement); *Keiffer v. Bechtel*
15 *Corp.*, 65 Cal. App. 4th 893, 895 (1998) (California Court of Appeal upheld jury
16 award in excess of \$75,000 for emotional distress damages in a single-plaintiff age
17 discrimination case); *Satrap v. Pac. Gas & Elec. Co.*, 42 Cal. App. 4th 72, 76 (1996)
18 (jury award in excess of \$75,000.00 in non-economic damages was upheld);
19 *Iwekaogwu v. City of Los Angeles*, 75 Cal. App. 4th 803, 821 (1999) (jury award in
20 excess of \$450,000 in emotional distress damages upheld in a discrimination
21 lawsuit); *Kroske v. U.S. Bank Corp.*, 432 F. 3d. 976, 980 (9th Cir. 2005), *cert denied*,
22 127 S.Ct. 157 (2006) (plaintiff’s “emotional distress damages would add at least an
23 additional \$25,000 to her claim” where she had only \$55,000 in lost wages).

24 43. Like the plaintiffs in these lawsuits, Plaintiff in this case alleges he was
25 an employee similarly claiming that he was discriminated against based on his
26 protected status and has allegedly suffered emotional distress as a result.
27 Accordingly, it is not unreasonable to assume, solely for the purposes of establishing
28 the amount in controversy, that Plaintiff seeks and would recover in excess of

1 \$75,000 for alleged emotional damages, alone, for the conduct alleged against
2 Defendants. Based on *Kroske*, a conservative emotional distress component of
3 Plaintiff's claims adds at least **\$50,000.00** to the amount in controversy.

4 **3. Punitive Damages**

5 44. Plaintiff also seeks an award of punitive damages. (Comp., ¶¶1, 20, 30,
6 38, 45, 52, 59, 64, and Prayer for Relief.)

7 45. Under California law, punitive damages may be recovered by a plaintiff
8 "[i]n an action for the breach of an obligation not arising from contract, where it is
9 proven by clear and convincing evidence that the defendant has been guilty of
10 oppression, fraud, or malice." Cal. Civ. Code § 3294(a). Punitive damages are
11 included in calculating the amount in controversy. *See Davenport v. Mutual Ben.*
12 *Health & Acc. Ass'n*, 325 F.2d 785, 787 (9th Cir. 1963); *see also Aucina v. Amoco*
13 *Oil Co.*, 871 F.Supp. 332 (S.D. Iowa 1994). A single-digit ratio (i.e., no more than
14 nine to one) is typically appropriate when issuing an award of punitive damages.
15 *State Farm v. Campbell*, 538 U.S. 408, 425 (2003).

16 46. Depending on the facts of the case, California verdicts often include
17 substantial punitive damage awards in employment discrimination actions. *Simmons*
18 *v. PCR Tech.*, 209 F. Supp. 2d 1029, 1033 (N.D. Cal. 2002) ("verdicts in these cases
19 amply demonstrate the potential for large punitive damage awards in employment
20 discrimination cases"); *see Sawyer v. Retail Data, LLC*, No. CV 15-184-JVS
21 (RNBx), 2015 WL 3929695, at *2 (C.D. Cal. Apr. 29, 2015) (holding that the amount
22 in controversy requirement was met partly because defendant "cite[d] to similar
23 recent Orange County and Los Angeles County employment discrimination cases
24 where plaintiffs were awarded from \$50,000 to \$7.5 million in punitive damages");
25 *Stainbrook v. Target Corp.*, 2016 WL 3248665, at *4 (accepting defendant's
26 argument that punitive and emotional distress damages alone could exceed \$75,000
27 because punitive damages are often calculated as a multiplier of compensatory
28 damages); *see also Aucina v. Amoco Oil Co.*, 871 F. Supp. 332, 334 (S.D. Iowa

1 1994) (“[b]ecause the purpose of punitive damages is to capture a defendant’s
2 attention and deter others from similar conduct, it is apparent plaintiff’s claim for
3 punitive damages alone might exceed [the jurisdictional amount]”).

4 47. To establish probable punitive damages, a defendant may introduce
5 evidence of verdicts in cases involving analogous facts. *Simmons*, 209 F. Supp. 2d
6 at 1033 (“the fact that the cited cases involve distinguishable facts is not dispositive”).
7 Statistics from Jury Verdict Research’s “Employment Practices Liability: Jury
8 Award Trends and Statistics” (2016) also confirm that the amount in controversy
9 exceeds the jurisdictional minimum. In 2015, the average damages award in
10 discrimination cases was \$463,905, in 2014 it was \$366,444, and in 2013 it was
11 \$311,749. *Id.* In addition, high punitive damages have been awarded in single-
12 plaintiff employment cases in California, including awards of \$500,000, \$3,577,803,
13 \$420,000, \$1,231,848, \$825,000, \$1,237,086, and \$16,729,880 (ultimately reduced
14 by the court to \$1,200,000). *Id.*

15 48. Thus, a punitive damages award against Defendants alone places this
16 amount in controversy.

17 **4. Attorneys’ Fees**

18 49. Plaintiff’s Complaint also seeks attorneys’ fees. (Comp., ¶¶1, 21, 29,
19 37, 44, 51, 58, 65, and Prayer for Relief.)

20 50. A claim for attorneys’ fees is included in determining the amount in
21 controversy when, as in the case at hand, Plaintiff is claiming attorneys’ fees pursuant
22 to statute. *See Galt G/S v. JSS Scandinavia*, 142 F.3d 1150, 1155-56 (9th Cir. 1998);
23 *Brady v. Mercedes-Benz USA, Inc.*, 243 F. Supp. 2d 1004, 1010-11 (N.D. Cal. 2002)
24 (in deciding amount in controversy issue, court may estimate the amount of
25 reasonable attorneys’ fees likely to be recovered by plaintiff if she were to prevail).
26 While Plaintiff’s attorneys’ fees cannot be precisely calculated, it is reasonable to
27 assume that they could exceed a damages award. *Simmons v. PCR Tech.*, 209 F.
28 Supp. 2d 1029, 1035 (N.D. Cal. 2002) (holding that where attorneys’ fees are

1 “recoverable by statute,” fees reasonably anticipated over the life of the litigation are
2 included in the amount in controversy analysis). At a minimum, Plaintiff may be
3 entitled to attorney’s fees under FEHA. *Avila v. Kiewit Corp.*, No. CV 19-5740-
4 MWF-JPR, 2019 WL 4729641, at *5 (C.D. Cal. Sept. 26, 2019). “A number of courts
5 have held that 100 hours and an hourly rate of \$300 is an appropriate and conservative
6 estimate for employment cases.” *Id.* at *6; *see also Sasso v. Noble Utah Long Beach,*
7 *LLC*, No. CV 14-09154-AB (AJWx), 2015 WL 898468, at *6 (C.D. Cal. Mar. 3,
8 2015) (“This Court and others have held that a reasonable rate for employment cases
9 is \$300 per hour” and “[r]ecent estimates for the number of hours expended through
10 trial for employment cases in this district have ranged from 100 to 300 hours.”).

11 51. Under this approach, reasonable attorneys’ fees in this matter are *at least*
12 expected to amount to **\$30,000** (\$300/hr x 100 hrs).

13 52. Plaintiff does not limit the amount of damages he is seeking. In
14 addition, the calculations set forth in this removal do not include several additional
15 categories of damages that Plaintiff explicitly seeks, including lost benefits.

16 53. Considering the aggregate value of Plaintiff’s claims, the alleged
17 amount in controversy well exceeds \$75,000 and this action is removable to this
18 Court pursuant to 28 U.S.C. §1441.

19 **IV. THE OTHER PREREQUISITES FOR REMOVAL HAVE BEEN**
20 **SATISFIED**

21 54. All defendants consent to the removal pursuant to 28 U.S.C.
22 § 1446(b)(2)(A).

23 55. The United States District Court for the Central District of California is
24 the federal judicial district in which the Los Angeles County Superior Court sits. This
25 action was originally filed in the Los Angeles County Superior Court, rendering
26 venue in this federal judicial district proper. 28 U.S.C. § 1441(a); *see also* 28 U.S.C.
27 § 84(c).
28

1 56. As required under 28 U.S.C. § 1446(d), Defendants will promptly serve
2 Plaintiff with this Notice of Removal and will promptly file a copy of this Notice of
3 Removal with the clerk of the Superior Court.

4 57. If any question arises as to the propriety of the removal of this action,
5 Defendants request the opportunity to present a brief and oral argument in support of
6 its position that this case is properly removed.

7 WHEREFORE, Defendants respectfully request that this action be removed
8 from the Superior Court of the State of California for the County of Los Angeles to
9 the United States District Court for the Central District of California, and that all
10 future proceedings in this matter take place in the United States District Court for the
11 Central District of California.

12 Dated: November 27, 2024

By: 

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